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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

PAUL TANNER

UNITED STATES OF AMERICA, PETITIONER

v.

ELIZABETH RUTH PAUL, EXECUTRIX OF THE ESTATE OF EARLE EVARTS PAUL, DECEASED

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

The Solicitor General, on behalf of the United States, prays that writs of certiorari issue to review the judgments of the United States Court of Claims entered in the above cases on May 3, 1955.

OPINIONS BELOW

The opinion of the Court of Claims in both cases (R. 97–103) is reported at 125 F. Supp. 240.

JURISDICTION

The judgments of the Court of Claims were entered on May 3, 1955 (R. 107–108). The jurisdiction of this Court is invoked under 28 U. S. C. 1255 (1).

QUESTION PRESENTED

Whether retired Army reserve officers may receive both retired pay and government civilian pay which together amount to more than $3,000 a year.

STATUTES INVOLVED

Section 212 (a) of the Economy Act of 1932 (47 Stat. 406) provides in material part as follows (5 U. S. C. 59a (a)):

> After [June 30, 1932], no person holding a civilian office or position, appointive or elective, under the United States Government * * * shall be entitled, during the period of such incumbency, to retired pay from the United States for or on account of services as a commissioned officer in any of the services mentioned in the Pay Adjustment Act of 1922 [U. S. C., title 37], at a rate in excess of an amount which when combined with the annual rate of compensation from such civilian office or position, makes the total rate from both sources more than $3,000; and when the retired pay amounts to or exceeds the rate of $3,000 per annum such person shall be entitled to the pay of the civilian office or position or the retired pay, whichever he may elect.

> As used in this section, the term "retired pay" shall be construed to include credits for all service that lawfully may enter into the computation thereof.

The Act of July 1, 1947 (61 Stat. 238), provides as follows (10 U. S. C. 1946 Ed. 371, 371b):

> All officers and employees of the United States or of the District of Columbia who shall be members of the Officers' Reserve Corps or the Enlisted Reserve Corps shall be entitled to leave of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be ordered to active duty for training, or active duty, or to duty with troops or at field exercises, or for instruction for periods not to exceed fifteen days in any one calendar year: *Provided,* That members of the Officers' Reserve Corps or the Enlisted Reserve Corps who are in the employ of the United States Government or of the District of Columbia and who are ordered to duty by proper authority shall, when relieved from duty, be restored to the positions held by them when ordered to duty.
>
> No existing law shall be construed to prevent any member of the Officers' Reserve Corps or the Enlisted Reserve Corps from accepting employment in any civil branch of the public service nor from receiving the pay incident to such employment in addition to any pay and allowances

to which he may be entitled under the laws relating to the Officers' Reserve Corps or the Enlisted Reserve Corps, nor as prohibiting him from practicing his civilian profession or occupation before or in connection with any department of the Federal Government.

Title III, Sec. 302 (a), of the Act of June 29, 1948 (62 Stat. 1081, 1087, 10 U. S. C. 1036a), provides:

> Any person who, upon attaining or having attained the age of sixty years, has performed satisfactory Federal service as defined in this section in the status of a commissioned officer, warrant officer, flight officer, or enlisted person in the Army of the United States or the Air Force of the United States, including the respective reserve components thereof, * * * and has completed an aggregate of twenty or more years of such satisfactory service in any or all of the aforesaid services, shall, upon application therefor, be granted retired pay * * *.

STATEMENT

In these cases, respondents, retired Army reserve officers employed by the United States in civilian capacities before and since their retirement, seek retired Army pay from the date on which they were placed on the reserve retired list. While the identical question is presented in each case, the underlying facts differ; accordingly, they are separately stated.

1. ADMINISTRATIVE PROCEEDINGS PRIOR TO RESPONDENTS' RETIREMENT

Tanner—On May 26, 1952, Tanner, who had been commissioned as an Army reserve officer in 1917 (R. 2), applied to the Adjutant General of the Army to be placed on the retired list with entitlement to retired pay under the Act of June 29, 1948, *supra,* p. 4 (R. 2). At the time he applied for Army retirement, Tanner was employed by the United States as a Department of the Army production specialist with a salary of $5,625 per year and at the time of suit his salary was $5,720 per year (R. 2). On July 15, 1952, the Army Finance Office informed Tanner that he was entitled to retired pay of $159.50 per month subject, however, to the dual salary restriction of Section 212 of the Economy Act of 1932, *supra,* p. 2, which limits combined civilian compensation and retirement pay for commissioned service to $3,000 per year (R. 3). Tanner was advised that when the annual rate of civilian compensation paid by the United States is $3,000 or more and the annual rate of retirement is less than $3,000, the Economy Act compels waiver of retirement pay and full payment of the civilian salary (R. 3). The Army placed Tanner on the retired list on June 26, 1952 (R. 2), but, observing the prohibition of the Economy Act, refused him retirement pay since he was then, and is now, earning in excess of $3,000 per year (R. 3).

Paul—Earle Evarts Paul,[1] a commissioned officer in the Officers Reserve Corps (R. 10), was placed, upon his application, on the Army of the United States retired list on June 29, 1948 (R. 10). At the time of his Army retirement, Paul was employed by the United States in a civilian capacity in the Veterans Administration, where he earned $9,600 per year (R. 10). Like Tanner, Paul was advised by the Army that his retired pay under the Act of 1948 was subject to the dual salary restrictions of the Economy Act and that, since he was earning in excess of $3,000 per year, he was not entitled to retired pay (R. 11).

2. JUDICIAL PROCEEDINGS

Tanner, on September 24, 1953 (R. 1), and Paul, on January 29, 1954 (R. 9), brought suit in the Court of Claims to recover retired pay allegedly due and owing from their dates of retirement. They contended that the Act of 1947, *supra,* p. 3, exempted retired Army reserve officers from the dual salary restrictions of the Economy Act by entitling them to receive as "pay and allowances" retired pay on account of Army service in addition to pay for their civilian employment. The court below, although noting that at the time of the enactment of the Act of 1947 there was no retired pay for reserve Army

[1] Paul died on January 14, 1953. His widow brought this action in the court below as executrix of the estate (R. 10).

officers for age or length of service (R. 102),[2] held that "The text of [the Act of 1947] has a fairly plain meaning. 'Pay and allowances' of a Reserve officer would naturally include his retired pay * * *" (R. 103) and, accordingly, granted respondents' motion for summary judgment.

REASONS FOR GRANTING THE WRITS

1. The court below in these cases has interpreted the language of a statute simply designed to protect government-employed reservists for the 15-day period of annual training to apply to the entire period of their retirement from military service. In doing so, it has found that retired *reserve* officers employed by the government are entitled to double pay even though that right is admittedly denied to retired *regular* officers. The opinion thus throws into utter confusion the relationship between the retirement provisions for regular and reserve officers. And although in these cases Army officers are involved, the court below reached the same result with respect to the Air Force, and the reasoning of the opinion is equally applicable to the Navy, the Marine Corps and the Coast Guard. In fact, it raises a question with respect to the retired pay of every retired

[2] It was not until the passage of Title III of the Act of June 29, 1948 (62 Stat. 1081, 1087, 10 U. S. C. 1036 *et seq.*), *supra*, p. 4, that Army reserve officers were eligible for retired pay on account of age or length of service.

reserve officer in any of the services who has taken government employment.

While it has not been possible to secure a complete estimate as to the number of individuals who may be affected by the decision of the court below, partial estimates indicate that there are at present at least 3,000 potential claimants for entitlement to retired pay under the decision. There are already pending in the Court of Claims 16 actions brought on behalf of 60 Army and Air Force officers and 7 actions brought on behalf of 128 Navy reservists, representing a potential liability of at least $800,000 on the part of the United States. The full liability would probably amount to several millions.

2. The Act of July 1, 1947 (*supra*, p. 3), on the basis of which the court below rested its curious conclusion, was designed to amend certain existing laws [3] so as to give Army reserve enlisted

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[3] Principally:

The Act of May 12, 1917, 40 Stat. 40, 72, 10 U. S. C. 1946 Ed. 371:

"All officers and employees of the United States or of the District of Columbia who shall be members of the Officers' Reserve Corps shall be entitled to leave of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be ordered to duty with troops or at field exercises, or for instruction, for periods not to exceed fifteen days in any one calendar year: *Provided further*, That members of the Officers' Reserve Corps who are in the employ of the United States Government or of the District of Columbia and who are ordered to duty by proper

men, who were government employees, the same rights to leave of absence from their civilian duties as were already enjoyed by Navy reservists and Army reserve officers.[4] As stated in the House hearing on H. R. 1845 (which later became the Act of July 1, 1947):

> The purpose of the proposed bill is to authorize military leave with pay for

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authority shall, when relieved from duty, be restored to the positions held by them when ordered to duty."

Section 80 of the Act of June 3, 1916, 39 Stat. 166, 203, 32 U. S. C. 1946 Ed. 75:

"All officers and employees of the United States and of the District of Columbia who shall be members of the National Guard shall be entitled to leave of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be engaged in field or coast-defense training ordered or authorized under the provisions of this title."

Section 9 of the Naval Reserve Act of 1938, 52 Stat. 1175, 1177, 34 U. S. C., 1946 Ed. 853g:

"* * * That all officers and employees of the United States or of the District of Columbia who are members of the Naval Reserve shall be entitled to leave of absence from their respective duties without loss of pay, time, or efficiency rating, on all days during which they may be employed with or without pay under the orders or authorization of competent authority, on training duty for periods not to exceed fifteen days in any one calendar year."

[4] The Act was entitled: "An Act to amend existing laws relating to military leave of certain employees of the United States or of the District of Columbia so as to equalize rights to leave of absence and reemployment for such employees who are members of the Enlisted or Officers' Reserve Corps, the National Guard, or the Naval Reserve, and for other purposes."

periods not to exceed 15 days annually for members of the *Army Enlisted Reserve Corps* employed by the Federal Government or the District of Columbia who are ordered to training duty in the Enlisted Reserve Corps. * * *

Employees of the United States or of the District of Columbia who are members of the Army Officers' Reserve Corps are entitled to the same military leave and reemployment rights under the Act of May 12, 1917 (40 Stat. 72; 10 U. S. C. 371) *as would be provided* for members of the Enlisted Reserve Corps by the proposed bill. Members of the Naval Reserve are entitled to military leave of 15 days annually under section 9 of the Naval Reserve Act of 1938 (52 Stat. 1177; 34 U. S. C. 853g) * * *.

* * * * *

Members of the Reserve Corps of the Army who are officers are entitled to 15 days leave with pay each year in order to train. Officers and enlisted men of the Naval Reserve are also entitled to that leave with pay. But enlisted men of the Army Reserve Corps are not entitled to that pay.

It was the purpose of H. R. 1845 to bring the enlisted men of the Army Reserve Corps up to the same status as officers of that corps and up to the same status as enlisted men of the Naval Reserve.[5] [Emphasis supplied.]

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[5] Subcommittee Hearings on H. R. 1845 to amend Section 371, Title 10, United States Code (Military Leave for Federal Employees), 80th Congress, House Committee On

With the enactment of H. R. 1845, the leave status of Army enlisted reservists was assimilated to that of Army commissioned reservists and Navy reservists, both enlisted and commissioned. All service reserves were given equal rights to job restoration on their return from temporary training duty.

In this context of granting equal leave status to enlisted men and of assuring to all reserve personnel restoration of their jobs on return from military duty, Congress further provided in Section 1b of the Act of 1947 that all reservists should be entitled to receive both their civilian compensation and military pay and allowances. Reading Sections 1a and 1b together, it is apparent that Congress intended to permit all reservists the same right to leave of absence for 15 days of military duty and to receive *for that military duty* pay and allowances in addition to civilian salary.

The Act's legislative history affirmatively indicates that the right of reservists to collect pay and allowances for military duty in addition to civilian compensation was intended by Congress to be limited to the right to collect only for 15 days of active duty training. In reporting its estimate of the cost of H. R. 1845, the House Committee on Armed Services stated:

Armed Services, Hearings, Vol. II, p. 2239, 2241–2242 [No. 139], May 19, 1947. See also House Report 483, 80th Cong., 1st Sess., p. 2; 27 Comp. Gen. 245, 247.

> The fiscal effects of this bill cannot be computed accurately since the number of enlisted reservists employed by the Federal Government or the District of Columbia who will partake in voluntary periods of training cannot be estimated accurately. A statistical solution, based on percentage of the male labor force employed by the Government, estimates the annual cost of salaries paid *while the enlisted reservists are on active duty will be $1,546,800. When the reserve training program has been fully implemented, continuing from a practical standpoint, the cost of this program would not even approximate the sum mentioned, since the Government must spend an equal sum on persons in other positions who would perform the same type of training and service.* Otherwise the entire training program would fail. Many reservists are in civil service and the Government desires that they be made available for the 15-day training period. If these persons are not available, it becomes necessary for the Government to obtain persons from some other source. [House Report No. 483, 80th Cong., 1st Sess., p. 3. (Emphasis supplied.)]

This statement refers, very logically, to the fiscal effects of paying enlisted reservists for 15 days of active duty. As has been noted above, H. R. 1845 was primarily concerned with equalizing the status of enlisted reservists; Army reserve officers gained no new benefits from Section 1a of the bill.

It is inconceivable, therefore, that in a bill to equalize the status of enlisted active reserve men, Congress, granting the privilege to all active reservists of receiving both civilian salary and active duty pay, would give retired reserve personnel alone * the unprecedented right annually to collect 12 months of retired pay and 12 months civilian salary.

Congress itself has not considered the 1947 Act as exempting reservists from the dual compensation statute. In the course of considering the Reserve Retirement Act in 1948, the question arose as to the right of reservists to double salary and it was clear that the Congressional spokesman for the measure did not believe that the provision of the Economy Act had been repealed. The following debate took place in the House of Representatives (94 Cong. Rec. 2483):

> Mr. MUHLENBERG. Is there anything in the bill that prevents duplication of pensions? For instance, a Reserve officer might be receiving a pension under another form of Federal security.
>
> Mr. JOHNSON of California. No; there is nothing that prevents that.
>
> Mr. MUHLENBERG. In the opinion of the chairman, would that be a wise provision to have in the bill?

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* Retired regular Army and Navy officers employed by the United States in civilian capacities may not receive both retired pay and civilian salary if the combined total exceeds $3,000. 5 U. S. C. 59a.

Mr. JOHNSON of California. Does the gentleman mean to prevent duplication?

Mr. MUHLENBERG. Yes.

Mr. JOHNSON of California. Frankly, I do not know what situation the gentleman has in mind, and I do not want to give him answer unless I have an idea of what he is talking about.

Mr. MUHLENBERG. A man in Federal service might be a civilian employee.

Mr. JOHNSON of California. *With respect to the Federal service there is another law that prohibits for dual payments in certain cases. If a man gets over $3,000, he cannot get anything under this bill. That applies to Army officers, and I think that is a good rule.* At least we cannot change it in this legislation. [Emphasis added.]

3. There is an additional reason why the construction of the Act of 1947 adopted by the court below is erroneous. Retired reserve officers, at the time of passage of the Act of 1947, were not entitled to retired pay and they did not become so entitled until June 29, 1948. Thus, it seems plain that when Congress provided in the Act of 1947 that "No *existing* law should be construed to prevent any member of the Officers Reserve Corps * * * from receiving * * * pay and allowances to which he may be entitled under the laws relating to the Officers Reserve Corps" [emphasis added], it could only have been viewing "pay and allow-

ances" as active duty "pay and allowances." Congress cannot be presumed to have been dealing in 1947 with a right which it did not create until 1948, particularly when its 1947 legislation refers to "no *existing* law." Furthermore, as we have noted *supra*, pp. 13–14, when Congress, well aware of the existence of the Act of 1947,[7] enacted the bill giving reserve officers the right to retired pay, it was stated on the floor, without hesitation and in unequivocal terms, that the right was subject to dual salary restrictions.

In summary, both the structure of the statute and its legislative history indicate that it was intended to give all reservists, regardless of service or rank, the right to receive, in addition to civilian salary, military pay for 15 days of active duty and *no more than that.* In the area of military pay and status legislation, Congress has always acted with the greatest specificity and exactitude. Had Congress intended to grant the special privilege which respondents claim, it would have done so by explicit language and openly declared its purpose. We submit that nothing in the history, language, or purpose of the Act of 1947, gives, either expressly or by implication, to respondents or other retired reserve officers a valuable right not possessed by regular military personnel.

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[7] See 94 Cong. Rec. at 2484.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for writs of certiorari should be granted.

SIMON E. SOBELOFF,
Solicitor General.
WARREN E. BURGER,
Assistant Attorney General.
SAMUEL D. SLADE,
SONDRA K. SLADE,
Attorneys.

JULY 1955.

APPENDIX

In the United States Court of Claims

(Decided November 2, 1954)

No. 543–53

PAUL TANNER v. THE UNITED STATES

No. 38–54

CHARLES C. ADAMS, ET AL. v. THE UNITED STATES

No. 39–54

ELIZABETH RUTH PAUL, EXECUTRIX OF THE ESTATE OF EARLE EVARTS PAUL v. THE UNITED STATES

Mr. Burr Tracy Ansell for the plaintiffs.

Mr. Kendall M. Barnes, with whom was *Mr. Assistant Attorney General Warren E. Burger*, for the defendant.

ON DEFENDANT'S AND PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT

MADDEN, *Judge*, delivered the opinion of the court:

Each of these three cases involves the question whether an Army Reserve or Air Force Reserve officer on the Retired List, who is otherwise entitled to receive retired pay, may receive such pay if he holds civilian employment with the Government for which he is paid $3,000 or more per year.

Section 212 of the Economy Act of June 30, 1932, 47 Stat. 406, as amended in 1940, 54 Stat. 761, provides in material part as follows:

(a) After the date of the enactment of this Act, no person holding a civilian office or position, appointive or elective, under the United States Government * * * shall be entitled, during the period of such incumbency, to retired pay from the United States for or on account of services as a commissioned officer in any of the services mentioned in the Pay Adjustment Act of 1922 [U. S. C., Title 37], at a rate in excess of an amount which when combined with the annual rate of compensation from such civilian office or position, makes the total rate from both sources more than $3,000; and when the retired pay amounts to or exceeds the rate of $3,000 per annum such person shall be entitled to the pay of the civilian office or position or the retired pay, whichever he may elect. As used in this section, the term "retired pay" shall be construed to include credits for all service that lawfully may enter into the computation thereof.

(b) This section shall not apply to any person whose retired pay, plus civilian pay, amounts to less than $3,000: *Provided*, That this section shall not apply to regular or emergency commissioned officers retired for disability incurred in combat with an enemy of the United States or for disabilities resulting from an explosion of an instrumentality of war [5 U. S. C. 59a] in line of duty * * *.

The Act of July 1, 1947, 61 Stat. 238, 10 U. S. C. 371 and 371 (b) provides:

371. All officers and employees of the United States or of the District of Columbia who shall be members of the Officers' Reserve Corps or the Enlisted Reserve Corps shall be entitled to leave of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be ordered to active duty for training, or active duty, or to duty with troops or at field exercises, or for instruction, for periods not to exceed fifteen days in any one calendar year: *Provided further*, That members of the Officers' Reserve Corps or the Enlisted Reserve Corps who are in the employ of the United States Government or of the District of Columbia and who are ordered to duty by proper authority shall, when relieved from duty, be restored to the positions held by them when ordered to duty.

371 (b). No existing law shall be construed to prevent any member of the Officers' Reserve Corps or the Enlisted Reserve Corps from accepting employment in any civil branch of the public service nor from receiving the

> pay incident to such employment in addition to any pay and allowances to which he may be entitled under the laws relating to the Officers' Reserve Corps or the Enlisted Reserve Corps, nor as prohibiting him from practicing his civilian profession or occupation before or in connection with any department of the Federal Government.

The Officers' Reserve Corps named in the statute was the Officers' Reserve Corps of the Army.

Title III of the Act of June 29, 1948, 62 Stat. 1087, 10 U. S. C. 1036, *et seq.*, authorized retired pay for Reserve officers of the Army who have reached the age of 60 and have had 20 or more years of satisfactory service.

The above-quoted provision of the Economy Act of 1932 expressly prohibits what the plaintiffs ask for. Unless that prohibition was nullified by the above quoted Section 371 (b) of the 1947 statute, the plaintiffs cannot prevail. The plaintiffs say that it was so nullified. They say that the retired pay which the 1948 statute authorizes for them is "pay and allowances to which [they] may be entitled under the laws relating to the Officers' Reserve Corps," within the meaning of the 1947 statute.

There is no problem here of a repeal of the 1932 Act by implication. The 1947 statute is express that "No existing law shall be construed to prevent" the receipt of the pay and allowances therein referred to. Our problem is to determine whether the expression "pay and allowances" includes the retired pay authorized by the 1948 Act.

Congress probably did not have retired pay for Reserve officers specifically in mind when it enacted the 1947 Act, since no such pay was available for Reserve officers on the basis of mere length of service until it was provided in the 1948 Act. There was no discussion of the 1947 Act on the floor of either House of Congress. In the House Committee, Captain Nunn of the Navy, having been called on for an explanation of Section 1 (b), quoted above from the 1947 Act, said:

> Subsection 1 (b) gives members of both Enlisted and Officers' Reserve Corps the same right to reemployment in any civil branch of the public service, to receive pay and allowances incident to such employment in addition

to pay and allowances they may be entitled to, and to practice civil professions or occupations before or in connection with any department of the Federal Government. It gives them those rights that naval reservists now have under the last provision of Section 4 of the Navy Reserve Act of 1938 and that the National Guard men will get under section 2 of the proposed bill.[1]

Section 4 of the Naval Reserve Act of 1938, 52 Stat. 1176, contained, with reference to the Naval Reserve, language similar to that of Section 1 (b) of the 1947 Act. It was, however, limited in a respect, the significance of which appears hereinafter.

The parties have urged upon us various rulings of the Comptroller General of the United States as showing the background against which the legislation in question should be projected, to ascertain the Congressional intent, and also as showing the administrative interpretation of the legislation, after its enactment.

On January 11, 1946, 25 Comp. Gen. 521, the Assistant Comptroller General ruled that in view of the express provisions of Section 4 of the Naval Reserve Act of 1938, referred to above, a retired member of the Naval Reserve could draw retired pay, computed in part on the basis of service as a commissioned officer, and at the same time hold a Government civilian position paying $3,750 a year. This ruling is strongly urged upon us by the plaintiffs.

On October 28, 1946, 26 Comp. Gen. 271, the Comptroller General ruled that a retired enlisted man of the Regular Navy, who, under the Act of February 21, 1946, 60 Stat. 26, was entitled to have his retired pay computed on the basis of a commissioned officer rank which he had held when he was recalled to active service from an earlier retirement, was subject to the provisions of Section 212 of the Economy Act of 1932. We have said above that there was an important difference between Section 4 of the Naval Reserve Act of 1938, and Section 1 (b) of the 1947 Act here in question, which applied to Reserve Officers of the Army. Section 4 of the 1938 Act said that no existing law should be construed to prevent a member of the Naval Reserve from holding a

[1] Hearings before Subcommittee No. 11, Legal, Committee on Armed Services, on H. R. 1845, 80th Cong., 1st Sess. [No. 139], Transcript, p. 2243.

civilian position with the Government and receiving the pay of that position in addition to any pay and allowances to which he might be entitled "under the provisions of this Act", *i. e.*, the 1938 Act. The exemption from Section 212 was therefore not applicable to pay and allowances of a Reserve officer granted by legislation other than the 1938 Act. In the 26 Comp. Gen. 271 case, the retired pay in question was granted by the Act of February 21, 1946, hence the exemption was not applicable. The Comptroller General in his opinion suggested comparison with the earlier ruling in 25 Comp. Gen. 521. Comparison shows that in that case the pay and allowances in question were granted under the 1938 Act, and the ruling was that the exemption from Section 212 applied.

On March 13, 1947, 26 Comp. Gen. 674, the Comptroller General ruled that the pay of a Naval Reserve officer for flights made on inactive duty training could be collected, in addition to the pay of a civilian Government position held by the Reserve officer. The Comptroller General did not mention Section 212 and it is obviously not applicable, since it relates only to *retired pay*. The Comptroller General's unspecified reference to "dual compensation" laws was probably to 5 U. S. C. 58 and 5 U. S. C. 62, not involved in this case.

On December 17, 1948, 28 Comp. Gen. 367, the Comptroller General ruled on the very question which is before us, *i. e.*, whether an Army Reserve officer might receive retired pay in addition to his civilian Government pay, the latter being in excess of $3,000. The ruling was that he might not. The Comptroller General said he had not found any provision of law exempting such officers from Section 212 of the 1932 Economy Act. He did not mention the 1947 Act, here under consideration, and it must be that he was not, at the moment, aware of it, since it was obviously at least arguably applicable.

On April 19, 1949, 28 Comp. Gen. 588, the Comptroller General ruled that a Naval Reserve officer receiving retired pay under Title III of the Act of June 29, 1948, was subject to Section 212. He pointed out that Section 4 of the 1938 Act granted exemption only for pay and allowances to

which an officer was entitled under the provisions of that Act, *i. e.*, the 1938 Act, hence the exemption was not applicable to retired pay granted by the 1948 Act. It may be inferred from the Comptroller General's discussion that if the retired pay in question had been granted by the 1938 Act, the ruling would have been the same as that in 25 Comp. Gen. 521, *i. e.*, in favor of the exemption.

Decisions of June 24, 1949, 28 Comp. Gen. 727, and May 29, 1952, 31 Comp. Gen. 619, relate, respectively, to an officer of the Regular Army and an officer of the Regular Navy. The legislation involved in our cases applies only to Reserve officers, hence these rulings are not in point.

The Comptroller General's ruling in 25 Comp. Gen. 521, was squarely in favor of the position taken by the plaintiffs in this case. His ruling in 28 Comp. Gen. 367, was squarely against the plaintiffs' position, but he was, apparently, unaware of the statute on which the plaintiffs rely. His language in 28 Comp. Gen. 588, indicated that he still adhered to his position taken in 25 Comp. Gen. 521. We do not find in the Comptroller General's opinions a consistent course of administrative construction which helps us to interpret the statute.

Nor do we find anything really helpful in the legislative history of the statute. It will be remembered that at the time of its enactment in 1947 there was, generally speaking, no retired pay for Reserve Army officers for age or length of service. When Title III of the Act of June 29, 1948, *supra*, which gave retired pay to Reserve officers of the Army for length of service was under discussion on the floor of the House of Representatives, Representative Johnson, Chairman of a Subcommittee of the Committee on Armed Services, in explanation of the bill, stated categorically that the Economy Act of 1932 would be applicable to retired pay received pursuant to the bill. 94 Cong. Rec. pp. 2481–2483.

In the 83d Congress, Public Law 300, approved February 20, 1954, amended Section 212 of the Economy Act of 1932 broadening its exemption relating to officers retired for disability [68 Stat. 18]. The Government points to language in Senate Report No. 885, 83d Congress, 2d Session, saying that "under the present law, retired commissioned officers are pro-

hibited from receiving both military retired pay and pay as a civilian employee of the Government if such combined amounts exceed $3,000 per annum * * *," except in case of retirement for disability. This statement was certainly true of Regular Army officers, and the Committee may, in making it, have been unaware of the problem of the instant litigation with regard to Reserve officers. The statement does not seem to us to show that the Committee had definite views as to our problem.

The Government points out that if the plaintiffs' interpretation of the 1947 Act were correct, Reserve officers would enjoy an important privilege not available to retired officers of the Regular Army. The plaintiffs' answer is that the retired pay of Reserve officers, merely for length of service, is only a small fractional part of the retired pay of officers of the Regular Army.

The text of the statute in question has a fairly plain meaning. "Pay and allowances" of a Reserve officer would naturally include his retired pay, if Congress provided retired pay for him. There is not enough, of significance, in the administrative and Congressional treatment of the statute to persuade us to depart from the natural meaning of the words of the statute.

The defendant's motion for summary judgment is denied, and the plaintiffs' motion is granted. Entry of judgment will be suspended to await the filing of a report by the General Accounting Office showing the amounts due the plaintiffs.

It is so ordered.

LARAMORE, *Judge;* WHITAKER, *Judge;* LITTLETON, *Judge;* and JONES, *Chief Judge*, concur.

In the United States Court of Claims

No. 543–53

PAUL TANNER

v.

THE UNITED STATES

ORDER

On November 2, 1954, the court rendered an opinion holding that plaintiff was entitled to recover but suspended the entry of judgment pending the filing of a report by the General Accounting Office showing the amount due plaintiff in accordance with the court's decision.

On April 19, 1955, said report by the General Accounting Office was filed in which it is stated that in accordance with the court's decision there is due plaintiff the sum of $4,523.50 for the period July 1, 1952 to November 2, 1954.

Now, therefore, it is ordered this third day of May 1955, that judgment be and the same hereby is entered in favor of plaintiff in the sum of four thousand five hundred twenty-three dollars and fifty cents ($4,523.50), representing the amount due plaintiff for the period July 1, 1952 to November 2, 1954.

By THE COURT,

MARVIN JONES, *Chief Judge.*

In the United States Court of Claims

No. 39–54

ELIZABETH RUTH PAUL, EXECUTRIX OF THE ESTATE OF EARLE EVARTS PAUL

v.

THE UNITED STATES

ORDER

On November 2, 1954, the court rendered an opinion holding that plaintiff was entitled to recover but suspended the entry of judgment pending the filing of a report by the General Accounting Office showing the amount due plaintiff in accordance with the court's decision.

On April 19, 1955, said report by the General Accounting Office was filed in which it is stated that in accordance with the court's decision there is due plaintiff the sum of $3,747.37 for the period June 29, 1948 to January 14, 1953.

Now, therefore, it is ordered this third day of May 1955, that judgment be and the same hereby is entered in favor of plaintiff in the sum of three thousand seven hundred forty-seven dollars and thirty-seven cents ($3,747.37), representing the amount due plaintiff for the period June 29, 1948 to January 14, 1953.

By THE COURT,
MARVIN JONES, *Chief Judge.*

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